

In the Matter of)
) File No. 0000506827
PCS Partners, LP)

⁴ See Petition at 2.

3. Telesaurus also argues that PCS failed to adhere to the Commission's rules governing disclosure of gross revenues by not providing year 2000 gross revenue information. In addition, Telesaurus urges that the gross revenues of the controlling interest holder of PCS, David Behenna, together with that of his wife, should have been provided and attributed to PCS for purposes of determining whether PCS qualified for a bidding credit as a very small business entity. Telesaurus further asserts that PCS did not comply with the Commission's rules governing the disclosure of gross revenue by not including gross revenues from the transfer of control and assignment of two of PCS' affiliates.⁵ On August 27, 2001, PCS filed an Opposition to Petition to Deny ("Opposition").

III. DISCUSSION

4. Telesaurus alleges that PCS is a speculative investor because it is owned and controlled by one person and because the principal business of PCS and its affiliates is investments. According to Telesaurus, David Behenna, the controlling interest holder of PCS, is in the business of buying and selling FCC licenses.⁶ Telesaurus' bare allegations provide no basis for denying PCS' application. The mere fact that PCS is owned and controlled by one person does not disqualify it from holding a license. Moreover, the Commission's rules permit the transfer of control and assignment of licenses after the licenses are granted provided prior Commission approval is obtained.⁷ Similarly, Telesaurus' unsupported allegation that PCS sought LMS licenses for "mobile" only service and not for radio location service is not sufficient grounds for denying PCS' application.

5. Telesaurus' contention here that PCS was required to provide year 2000 gross revenue information is based on an inaccurate interpretation of the Commission's rules, as the Bureau explained in the *LMS Auction Order* in addressing the same argument by Telesaurus. Applicants that use audited financial statements are required to furnish evidence of their annual gross revenue based upon their most *recently completed* audited financial statements.⁸ Accordingly, PCS Partners, which uses audited financial statements, was obliged to use the most recently completed audited financial statements to support its gross revenue calculation.⁹ At the time the long-form application was due, on June 29, 2000, PCS did not yet have audited financial statements for the year 2000.¹⁰ Accordingly, PCS submitted gross revenues, supported by audited financial statements, for the three most recently completed years, 1997, 1998 and 1999, and in addition, "out of an abundance of caution"¹¹ provided un-audited financial information for year 2000. Accordingly, PCS complied with the Commission's gross revenue disclosure requirements. In any event, whether PCS' gross revenues are calculated based upon the inclusion of the un-audited information for 2000 or upon information provided for 1997 to 1999 as supported by audited financial statements, PCS clearly falls within the parameters necessary to qualify for a bidding credit as a very small business, because its gross revenues in either case do not exceed the applicable \$3 million limit

⁵ Telesaurus also argues that PCS' short-form application (Form 175) was defective and should bar the grant of PCS' long-form application. The argument that PCS' short-form application was deficient has been considered and rejected in a separate order issued by the Bureau. See In the Matter of Auction of Licenses for VHF Public Coast and Location and Monitoring Service Spectrum, *Order*, DA 02-2631, ¶¶ 5-10 (WTB rel. Oct. 11, 2002) ("*LMS Auction Order*"). Accordingly, we need not address that issue here.

⁶ See Petition at 2-3.

⁷ See 47 C.F.R. § 1.948(c)(1). In certain circumstances involving pro-forma transfers or assignments, prior Commission approval is not required. See 47 C.F.R. § 1.948.

⁸ *LMS Auction Order* at ¶ 9 (citing "Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction," *Public Notice*, 13 FCC Rcd 341,345 (1998)).

⁹ See *LMS Auction Order* at ¶ 9.

¹⁰ See PCS Application Exhibit C.

¹¹ *Id.*

established by section 1.2110 of the Commission's rules.¹² We therefore conclude that Telesaurus' arguments pertaining to PCS' disclosure of gross revenue information do not support denial of either PCS' application or its request for a bidding credit as a very small business entity.

6. Telesaurus further alleges that PCS was not eligible for a bidding credit because it improperly failed to include in its gross revenues the proceeds of transactions involving two affiliates of PCS, Sea Breeze, LP. ("Sea Breeze") and Comet Wireless, Inc. ("Comet"). Comet, a wholly-owned subsidiary of Sea Breeze, and Sea Breeze were affiliates of PCS, and both were listed in PCS' Exhibit C to its long-form application with their respective gross revenues. On October 5, 2000, Sea Breeze, Comet, and AT&T Wireless PCS, LLC ("AT&T Wireless") filed a transfer of control application to transfer certain licenses held by Comet to AT&T Wireless.¹³ Sea Breeze also filed an assignment application on October 11, 2000, proposing the sale of certain licenses held by Sea Breeze to Lewis and Clark Communications, LLC ("Lewis and Clark").¹⁴ On December 1, 2000, the Commission consented to the transfer of control application filed by Sea Breeze, Comet and AT&T Wireless.¹⁵ On January 26, 2001, the Commission consented to the assignment application between Sea Breeze and Lewis and Clark.¹⁶ Telesaurus contends that the revenues from these two transactions should have been attributed to PCS' year 2000 gross revenues. PCS, however, responds that several conditions, including payment, were not actually assured until the final closing, which occurred in February 2001, and therefore that revenues from these transactions were attributable to year 2001 not year 2000.¹⁷ Commission records show that the transfer to AT&T Wireless was not consummated until February 22, 2001¹⁸ and that the assignment to Lewis and Clark was not consummated until February 8, 2001.¹⁹ We therefore agree with PCS that the revenues from the sale transactions to AT&T and Lewis and Clark are attributable to year 2001 and not year 2000.

7. Telesaurus' argument that the gross revenues of PCS' controlling interest holder, David Behenna, and his wife should have been disclosed is incorrect. The personal income of an individual is part of personal net worth and under Commission rules is not attributable for purposes of calculating the gross revenues of an entity seeking a bidding credit.²⁰ Accordingly, PCS was not required to disclose the

¹² See 47 C.F.R. §1.2110. PCS' average gross revenue based upon audited financial data for years 1997, 1998 and 1999 was \$43,373, compared to its average gross revenue of \$377,305 based upon 1998, 1999 and the inclusion of un-audited information for 2000.

¹³ See File No. 0000234215.

¹⁴ See File No. 0000234213.

¹⁵ See "Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action," *Public Notice* (Dec. 6, 2000).

¹⁶ See "Wireless Telecommunications Bureau Grants Consent to Assign C and F Block Broadband PCS Licenses," *Public Notice*, 16 FCC Rcd 3862 (2001).

¹⁷ Opposition at 4.

¹⁸ See "Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action," *Public Notice* (Mar. 7, 2001).

¹⁹ See "Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action," *Public Notice* (Mar. 14, 2001).

²⁰ See, e.g., Amendments of Parts 1, 2, 87 and 1010 of the Commission Rules to License Fixed Services at 24 GHz, Docket No. 99-238, *Report and Order*, FCC 00-272, at ¶ 88 (rel. Aug. 1, 2000); Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030, 10086, ¶ 100 (1999); "Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction," *Public Notice*, 13 FCC Rcd 342, 346 (1998); In the Matter of Implementation of Section 309 (j) of the

personal income of its individual controlling interest holder.²¹

8. For the reasons explained above, none of Telesaurus' allegations persuade us to deny either PCS' application or its request for a bidding credit as a very small business entity. For the same reasons, we further conclude that Telesaurus' allegations provide no grounds for conducting an audit of PCS' reported gross revenues. Accordingly, we will deny Telesaurus' Petition in its entirety.

IV. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 0.331 and 1.939(h) of the Commission's rules, 47 C.F.R. §§ 0.331, 1.939(h), the Petition to Deny filed by Telesaurus Holdings GB, LLC on August 20, 2001 IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Linda C. Ray
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Commercial Wireless Division
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Communications Act—Competitive Bidding, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, 421, ¶ 30 (1994).

²¹ Telesaurus infers from the listing of "N/A" in the column for gross revenue, as opposed to the listing of "zero," in PCS' Exhibit C to its Form 601 that PCS excluded the income of David Behenna and his wife. See Petition at 11. Regardless of the listing of either "N/A" or "zero," this information constitutes personal income and, as explained above, disclosure is not required.